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PAGE 01 STATE 012482

62

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E.O.11652 GDS

TAGS: EFIN, OECD

SUBJ: INVISIBLES COMMITTEE REPORT ON INTERNATIONAL DIRECT
INVESTMENT

REF: (A)DAF/INV.73.51 (1ST REVISION); (B)OECD PARIS 32390;
(C)STATE 168157; (D)OECD PARIS 1340

1. BELIEVE REVISED DOCUMENT ON DIRECT INVESTMENT (REF.A)
IS GREAT IMPROVEMENT OVER ITS PREDECESSOR IN SUBSTANCE AND
TONE AS WELL AS IN TAKING EXPLICIT COGNIZANCE OF RELATION-
SHIP INWARD DIRECT INVESTMENT ASPECTS OF CAPITAL MOVEMENTS
CODE (CMC) TO CURRENT INVESTMENT EXERCISE IN XCSS AND ITS
EXPERTS GROUP. WE HAVE NO MAJOR DIFFICULTIES WITH THE
REPORT. US EXPERTS ON INVISIBLES COMMITTEE (IC) SHOULD,
HOWEVER, KEEP FOLLOWING COMMENTS IN MIND IN FURTHER DIS-
CUSSIONS OF REF.A.

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PAGE 02 STATE 012482

2. IC'S REPORT RIGHTLY CALLS ATTENTION TO DIFFICULTIES

ENCOUNTERED IN IMPLEMENTING DIRECT INVESTMENT PROVISIONS OF CMC, WHICH DIFFICULTIES HAVE MOTIVATED SPECIAL SERIES OF ANNUAL MEETINGS OF INWARD DIRECT INVESTMENT EXPERTS. HOWEVER, AS REPORT ITSELF ACKNOWLEDGES, THESE SPECIAL ANNUAL MEETINGS HAVE THUS FAR BEEN ONLY OF LIMITED VALUE IN PRODUCING BETTER INFORMATION ON NATIONAL PRACTICES IN TREATMENT OF PARTICULAR CASES OF DIRECT INVESTMENT. ACCORDINGLY, LAST SENTENCE OF PARAGRAPH 25 MAY BE MISLEADING. SENTENCE READS "SO FAR, IT SHOULD BE ADDED, THE COMMITTEE HAS NOT DRAWN FROM THESE MEETINGS THE IMPRESSION THAT EITHER THE LETTER OR THE SPIRIT OF THE CODE IN MATTERS OF DIRECT INVESTMENT ARE BEING INFRINGED EXCEPT marginally IN A FEW INSTANCES." THE ACCURACY OF THE REPORT COULD BE IMPROVED BY AN AMENDMENT OF THE PARAGRAPH SUCH AS BY ADDING THE FOLLOWING SENTENCE: "HOWEVER, THE COMMITTEE DOES NOT YET HAVE SUFFICIENT INFORMATION FOR A JUDGEMENT AS TO WHETHER THIS IMPRESSION REFLECTS THE REAL SITUATION."

3. DIFFICULTIES WITH IMPLEMENTING DIRECT INVESTMENT OBLIGATIONS OF CMC, WHICH PARTICULARLY CENTERED IN INTERPRETATION TO BE GIVEN TO SO-CALLED SECOND REMARK, WITH REGARD TO SPECIFIC DIRECT INVESTMENT PROJECTS, AND TO ARTICLE 16, WITH RESPECT TO FRUSTRATION OF LIBERALIZATION BY INTERNAL ARRANGEMENTS, HAVE DIRECT RELATIONSHIP TO THE WORK OF XCSS IN AREAS OF NATIONAL TREATMENT AND OF DISTORTIONS ARISING FROM GOVERNMENTAL INVESTMENT POLICIES. WE SUPPORT IC EFFORTS TO CLARIFY INTERPRETATION OF CMC AND IMPROVE ITS ADMINISTRATION IN THESE RESPECTS, AMONG OTHER THINGS, THROUGH THE CONTINUATION OF ANNUAL SPECIAL SESSIONS ON DIRECT INVESTMENT. NEVERTHELESS, SHOULD BE RECOGNIZED THAT AS XCSS WORK MOVES FORWARD SOME OF CONCERNS OF IC IN THIS AREA MIGHT LOGICALLY BE TRANSFERRED, IF IT SHOULD BE DECIDED TO FORM NEW GROUP TO CONDUCT REVIEWS AND CONSULTATIONS ON NATIONAL TREATMENT OF FOREIGN INVESTORS AND ON INCENTIVES AND DISINCENTIVES TO INVESTMENT. AT THE LEAST, SUCH NEW ARRANGEMENTS WILL CALL FOR DELIMITATION OF RESPONSIBILITY BETWEEN ASPECTS THAT SHOULD CONTINUE TO BE HANDLED UNDER CODE AND THOSE TO BE HANDLED IN NEW CONTEXT. WOULD BE HELPFUL LIMITED OFFICIAL USE

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PAGE 03 STATE 012482

FOR IC TO GIVE MORE THOUGHT TO THIS MATTER SO AS TO BE ABLE TO CONTRIBUTE SUGGESTIONS AT APPROPRIATE TIME.

4. ANOTHER QUESTION IN WHICH BORDER-LINE BETWEEN CMC AND ANY NEW ARRANGEMENTS RESULTING FROM XCSS EFFORTS REMAINS SOMEWHAT UNCLEAR IS DEFINITION OF PRECISE EXTENT TO WHICH CMC NOW COVERS RIGHT OF ENTRY BY FOREIGN INVESTORS. FURTHERMORE, THE EXACT EXTENT TO WHICH THE CMC MAY OR

MAY NOT COVER "RIGHT OF ESTABLISHMENT," WHICH INCLUDES
RIGHT OF ENTRY, SEEMS TO NEED FURTHER CLARIFICATION. CMC
APPEARS CLEARLY TO COVER CAPITAL TRANSACTIONS AS WELL AS
TRANSFERS OF FOREIGN INVESTORS. IN CONNECTION WITH XCSS
EXERCISE, IT MIGHT BE USEFUL FOR IC TO CLARIFY PRECISE
EXTENT TO WHICH CMC ALREADY COVERS "NATIONAL TREATMENT."
IC MAY WISH STUDY AND COMMENT ON OECD LEGAL SERVICES
PAPER MENTIONED IN REF. D. RUSH

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